

**PREHEARING ORDER OF COMMISSION**

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Objections filed by hth companies, inc., (hth) and Thermaltech, Inc. (Thermaltech) filed on March 31, 2005, to Annual Wage Order No. 12, pertaining to the wage rate for the occupational title of asbestos worker in Section 001, Adair County (Objection No. 3), Section 004, Audrain County (Objection No. 4), Section 010, Boone County (Objection No. 5) and Section 016, Cape Girardeau County (Objection No. 6); issued by the Division of Labor Standards, Department of Labor and Industrial Relations, filed with the Secretary of State: March 9, 2005.

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**I. Prehearing Conference**

On May 3, 2005, pursuant to 8 CSR 20-5.010(3)(A), a prehearing conference was convened on the above-referenced objections for the purpose of aiding in the disposition of the hearing. Present at the prehearing conference were: James J. Boeckman for the Division of Labor Standards (Division); Michael Pritchett, counsel for the Division; Nancy Leonard, counsel for hth companies, inc., and Thermaltech, Inc. (Objectors); and Ronald Gladney, counsel for International Association of Heat Frost Insulators and Asbestos Workers, Local Union No. 1, AFL-CIO (AWIU)(Intervenor). Susan M. Venturella, counsel for the Labor and Industrial Relations Commission (Commission) and the Commission's designated representative, presided over the prehearing conference.

**II. Prefiled Testimony and Exhibits**

In accordance with the procedure to be followed at the hearing, as set out in 8 CSR 20-5.010(4), the following evidence was submitted:

**For the Division:**

The prepared testimony, with accompanying attachments, of:  
James J. Boeckman, Assistant Director, Division of Labor Standards.

**For Objectors:**

The prepared testimony, with accompanying attachments, of:  
Greg Hoberock, President, hth companies, inc.  
Anne McPherson, President, Thermaltech, Inc.

Exhibits as described below:

Pro-Insulation, Inc., April 25, 2005, letter  
Insulation Masters, Inc., payroll record and job log  
Midwest Mechanical Insulation, job cost detail report  
Loti Construction Services, certified payroll records  
J & S Companies, Inc., certified payroll records

**For Intervenors**

The prepared testimony, with accompanying attachments, of:  
Thomas Leahy, Business Representative for AWIU Local Union No. 1

The parties advised that Mr. Boeckman, Mr. Hoberock, Ms. McPherson, and Mr. Leahy would be present at the scheduled hearing for purposes of cross-examination. Objectors anticipate that they will request that the Commission issue subpoenas demanding the appearance at the hearing of one or more witnesses for testimony and/or the production of documents. Objectors anticipate that they will offer additional documentary evidence before or at the time of the hearing.

Objectors and Intervenor have no foundational objections to the Division's prefiled evidence. The Division and Objectors have no foundational objections to Intervenor's prefiled evidence. The Division and Intervenor have no foundational objections to Objectors' prefiled testimony. At the prehearing conference, the Division and Intervenor received copies of Objectors' prefiled documentary evidence as set forth above. The Division and Intervenor acknowledge receipt of the prefiled documents but reserve all objections thereto.

### **III. Issues for the Hearing**

For Boone and Cape Girardeau Counties, Objectors, hth (Cape Girardeau) and Thermaltech (Boone) question the accuracy and reliability of contractor reports relied upon by the Division in determining the wage rate for asbestos worker. Specifically, Objectors believe the contractor reports upon which the Division relied may reflect:

- hours at hourly wage rates and benefits that differ from the actual wage rate and benefits paid for those hours
- more hours than actually worked
- hours for work performed in a county other than the county reflected on the contractor reports

The Division responds that it had no reason to believe that the hours and wages submitted on the contractor reports were unreliable or inaccurate and, therefore, the Division properly relied upon the hours and wages submitted thereon to determine the wage rate for asbestos worker in Boone and Cape Girardeau Counties. Intervenor contends Annual Wage Order No. 12 accurately reflects the prevailing wage for asbestos worker in Boone and Cape Girardeau Counties.

For Adair and Audrain Counties, Objector, Thermaltech, argues that the contractor reports submitted by Thermaltech with its objection report hours sufficient to establish the wage rates reflected therein as the prevailing wage rates for asbestos worker in Audrain and Adair Counties.

The Division responds that the Division and Objector entered into a Stipulation of Fact agreeing that the wage rate reflected on the Thermaltech contractor reports is the prevailing wage. The Commission has not acted on the Stipulation of Fact. Intervenor

questions the accuracy and reliability of the contractor reports submitted by Thermaltech. Intervenor believes the reports may reflect hours:

- worked by workers other than asbestos workers
- worked by illegal aliens
- worked by apprentices

Objectors have filed Motions to Quash subpoenas duces tecum requested by the Intervenor seeking production of green cards, Employment Eligibility Verification Forms (Forms I-9), drivers' licenses or other personal identification cards, and social security numbers provided by job applicants. Objectors oppose the subpoenas on the basis that the requested documents deal solely with worker status issues that are solely within the jurisdiction of the Immigration and Naturalization Service. Objectors also argue that the information contained in the subpoenaed documents is irrelevant to these proceedings. Intervenor expressed its intent to file written objections to the Motions to Quash arguing that the Commission is without authority to quash the subpoenas and that the requested documents contain relevant and material evidence. The Commission has not acted on the Motion to Quash.

#### **IV. Hearing Information**

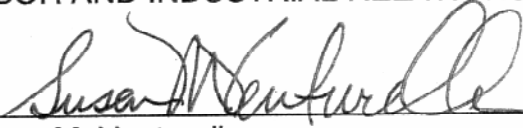
The Commission has scheduled the hearing on the above-referenced objections at 10:00 a.m., Monday, May 16, 2005, and Tuesday, May 17, 2005 (if necessary) in Jefferson City, Missouri. The location of the hearing is the Department of Labor and Industrial Relations Building, 3315 West Truman Boulevard, in the second floor conference room.

"No direct evidence, other than the testimony and documents filed at the prehearing conference, will be allowed at the hearing, except at the discretion of the commission." 8 CSR 20-5.010(4)(B)4.

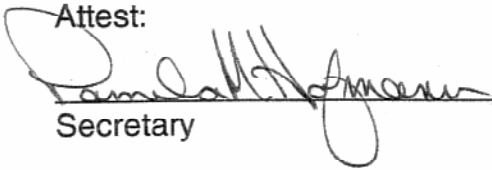
This Order is prepared in accordance with 8 CSR 20-5.010(3)(B) and is hereby executed by the Commission's designated representative.

Given at the City of Jefferson, State of Missouri, this 6<sup>th</sup> day of May 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

  
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Susan M. Venturella  
Designated Representative

Attest:

  
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Secretary